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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,279	09/29/2003	Wolfgang Hartung	117163.00090	3123
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HAHN LOESER & PARKS, LLP				
One GOJO Plaza				
Suite 300				
AKRON, OH 44311-1076				
EXAMINER				
ALTER, ALYSSA M.				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
08/25/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
akron-docket@hotmail.com

Office Action Summary

Application No.

10/674,279

Applicant(s)

HARTUNG, WOLFGANG

Examiner

ALYSSA M. ALTER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-11, 17, 18, 21, 22, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11, 17, 18, 21, 22, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 13, 2008 has been entered.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

However, it is noted that these documents have not been scanned into the application file. The examiner has requested a copy of these documents, but in the event the documents can not be timely obtained, the examiner respectfully requests that the Applicant resubmit the foreign priority documents.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 6-11, 17-18, 21-22 and 25-26 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 3, 7-8 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Alt et al. (US 6,370,427 B1). Alt et al. discloses a pacing and defibrillation system. As seen in figure 4 the system includes an electrode line or lead 63 in the atrium with a wall electrode 64 and a floating electrode 62. Electrode 64, or the wall electrode, is used for sensing and pacing the cardiac activity of the atrium. Electrode 62, or the floating electrode, is used to provide a defibrillation shock to the heart. The wall electrode operates in a first mode by sensing and pacing the atrium of the heart, while the floating electrode operates in a second mode to provide defibrillation stimulation.

Additionally, figure 4 depicts a VDD or ventricular electrode line, lead 66. The lead also possesses a floating electrode 70.

As to claims 3 and 11, as seen in figure 4, there are additionally one more floating electrode 77. Therefore, Alt et al. discloses a system with two or more floating electrodes.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 9 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alt et al. (US 6,370,427 B1). Alt et al. discloses the sensing of cardiac dysrhythmia, such as fibrillation, and thus include evaluating atrial signals when the signal frequency is about 150 Hz or higher.

In the alternative, although the examiner considers Alt et al. to disclose evaluating atrial signals when the signal frequency is about 150 Hz or higher above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the evaluated atrial signals when the signal frequency is about 150 Hz or higher, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (see MPEP 2144.05). Furthermore, such a modification would provide the predictable results of enabling the system to sense dysrhythmias such as tachycardia and fibrillation.

2. Claims 2, 6, 10-11, 17-18, 21 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt et al. (US 6,370,427 B1). Alt et al. discloses the claimed invention except for the high frequency stimulation with a cycle length of between 30-

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100 ms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cycle length of the stimulation by Alt et al., since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (see MPEP 2144.05). Furthermore, such a modification to the cycle length would modify the stimulation to meet specific patient therapy needs and requirements.

As to claims 6, 17-18, Alt et al. discloses the device substantially as claimed except for the floating electrode performing as a sensor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillation electrode with a sensing capabilities since it is well known in the art to use dual sensing and stimulating electrodes. Furthermore, such a modification would provide the predictable results of additional sensing to ensure proper detection of cardiac fibrillation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALYSSA M. ALTER whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Angela D Sykes/
Supervisory Patent Examiner, Art Unit 3762

/Alyssa M Alter/
Examiner
Art Unit 3762